

CALIFORNIA COASTAL COMMISSION

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January 27, 2006

TO: COMMISSIONERS AND INTERESTED PERSONS**Thu 15c****FROM: DEBORAH LEE, SOUTH COAST DEPUTY DIRECTOR
SHERILYN SARB, DISTRICT MANAGER, SAN DIEGO
DIANA LILLY, COASTAL PROGRAM ANALYST****SUBJECT: STAFF RECOMMENDATION ON CITY OF CARLSBAD MAJOR
AMENDMENT NO. 3-04B (NPDES Stormwater Regulations) For
Public Hearing and Possible Commission Action at the Meeting of
February 8-10, 2006**

SYNOPSIS

The subject LCP land use plan and implementation plan amendment was filed as complete on January 7, 2005. A one-year time extension was granted on March 17, 2005. As such, the last date for Commission action on this item is April 7, 2006.

SUMMARY OF AMENDMENT REQUEST

The subject LCP amendment is intended to bring the City's Local Coastal Program into compliance with the California Regional Water Quality Control Board's National Pollution Discharge Elimination System (NPDES) municipal stormwater permit for San Diego County, including the City of Carlsbad. The NPDES permit mandates the implementation of new/revised storm water protection policies, procedures, requirements, standards and ordinances to reduce discharges of pollutants and runoff flow resulting from existing and new development.

The proposed amendment involves changes to both the certified LCP land use plan and the implementation plan. Land use plan changes (grading, drainage and erosion control policy revisions) would occur in the Mello I, Mello II, Agua Hedionda, East Batiquitos Lagoon/Hunt Properties and West Batiquitos Lagoon/Sammis Properties segments. The City's Municipal Code and Zoning Ordinance are the implementation plan for the City's LCP. Implementation Plan amendments would occur in the form of changes to the Municipal Code Chapters 15.12 (Storm Water Management and Discharge Control), 15.16 (Grading and Erosion Control), and Zoning Ordinance chapters 21.203 (Coastal Resource Protection Overlay Zone) and 21.205 (Coastal Resource Overlay Zone Mello I LCP Segment). The City is also striking the existing reference to the City's Master Drainage Plan (June 1980), and replacing it with reference to the Master Drainage Plan, the most current version of which is dated 1994.

SUMMARY OF STAFF RECOMMENDATION

Staff is recommending denial of the proposed Land Use Plan and Implementation Plan amendments as submitted, and approval with suggested modifications. The City is proposing to add the following into several areas or both the LUP and IP:

All development must include mitigation measures for the control of urban runoff flow rates and velocities, urban pollutants, erosion and sedimentation in accordance with the requirements of the City's Grading Ordinance, Storm Water Ordinance, SUSMP, JURMP, Master Drainage Plan and the San Diego County Hydrology Manual and the additional requirements enumerated in this Section.

The suggested modifications would revise and expand the proposed language to clarify the SUSMP and Master Drainage Plan will become part of the LCP. The Grading Ordinance and Storm Water Ordinance are currently part of the LCP. The JURMP and San Diego County Hydrology Manual are not part of the certified LCP.

In addition, the suggested modifications expand the policies contained in the LUP to include language the City has recently incorporated into the Open Space and Conservation Elements of the General Plan, and additional policies necessary to guide and direct implementation of the SUSMP, Grading Ordinance and Storm Water Ordinance in the coastal zone. The suggested language would add a requirement that the Pacific Ocean be considered an Environmentally Sensitive Area (ESA), as defined in the SUSMP, in review of development within 200 feet of the ocean and that discharges to the ocean. Further, although residential development of less than 10 units, including single family residences, are generally not considered priority projects, they shall meet those requirements, including achievement of the numerical sizing standard, if they are in, near or discharging to an ESA or the Pacific Ocean.

The appropriate resolutions and motions begin on page 4. The suggested modifications begin on page 7. The findings for denial of the Land Use Plan Amendment as submitted and approval if modified begin on page 11. The findings for denial of the Implementation Plan Amendment as submitted and approval if modified begin on page 18.

BACKGROUND

The City of Carlsbad certified LCP contains six geographic segments as follows: Agua Hedionda, Mello I, Mello II, West Batiquitos Lagoon/Sammis Properties, East Batiquitos Lagoon/Hunt Properties and Village Redevelopment. Pursuant to Sections 30170(f) and 30171 of the Public Resources Code, the Coastal Commission prepared and approved two portions of the LCP, the Mello I and II segments in 1980 and 1981, respectively. The West Batiquitos Lagoon/ Sammis Properties segment was certified in 1985. The East Batiquitos Lagoon/Hunt Properties segment was certified in 1988. The Village Redevelopment Area LCP was certified in 1988; the City has been issuing coastal development permits there since that time. On October 21, 1997, the City assumed permit jurisdiction and has been issuing coastal development permits for all segments except Agua Hedionda. The Agua Hedionda Lagoon LCP segment is a deferred

certification area until an implementation plan for that segment is certified. The subject amendment requests affect all of the LCP segments except for the Village Redevelopment segment.

ADDITIONAL INFORMATION

Further information on the submittal may be obtained from **Diana Lilly** at the San Diego Area Office of the Coastal Commission at 3111 Camino Del Rio North, Suite 200, San Diego, CA 92108, (619) 521-8036.

PART I. OVERVIEW

A. STANDARD OF REVIEW

The standard of review for land use plans, or their amendments, is found in Section 30512 of the Coastal Act. This section requires the Commission to certify an LUP or LUP amendment if it finds that it meets the requirements of and conforms with Chapter 3 of the Coastal Act. Specifically, it states:

Section 30512

(c) The Commission shall certify a land use plan, or any amendments thereto, if it finds that a land use plan meets the requirements of, and is in conformity with, the policies of Chapter 3 (commencing with Section 30200). Except as provided in paragraph (1) of subdivision (a), a decision to certify shall require a majority vote of the appointed membership of the Commission.

Pursuant to Section 30513 of the Coastal Act, the Commission may only reject zoning ordinances or other implementing actions, as well as their amendments, on the grounds that they do not conform with, or are inadequate to carry out, the provisions of the certified land use plan. The Commission shall take action by a majority vote of the Commissioners present.

In those cases when a local government approves implementing ordinances in association with a land use plan amendment and both are submitted to the Commission for certification as part of one LCP amendment, pursuant to Section 13542(c) of the Commission's regulations, the standard of review of the implementing actions shall be the land use plan most recently certified by the Commission. Thus, if the land use plan is conditionally certified subject to local government acceptance of the suggested modifications, the standard of review shall be the conditionally certified land use plan.

B. PUBLIC PARTICIPATION

The City has held Planning Commission and City Council meetings with regard to the subject amendment request. All of those local hearings were duly noticed to the public. Notice of the subject amendment has been distributed to all known interested parties.

PART II. LOCAL COASTAL PROGRAM SUBMITTAL - RESOLUTIONS

Following a public hearing, staff recommends the Commission adopt the following resolutions and findings. The appropriate motion to introduce the resolution and a staff recommendation are provided just prior to each resolution.

- I. MOTION I:** *I move that the Commission certify the Land Use Plan Amendment #3-04B for the City of Carlsbad as submitted.*

STAFF RECOMMENDATION OF DENIAL OF CERTIFICATION:

Staff recommends a **NO** vote on the motion. Failure of this motion will result in denial of the land use plan amendment as resubmitted and adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the appointed Commissioners.

RESOLUTION TO DENY CERTIFICATION OF LAND USE PLAN AMENDMENT AS SUBMITTED:

The Commission hereby denies certification of the Land Use Plan Amendment #3-04B for the City of Carlsbad as submitted and finds for the reasons discussed below that the submitted Land Use Plan Amendment fails to meet the requirements of and does not conform to the policies of Chapter 3 of the California Coastal Act. Certification of the plan would not comply with the California Environmental Quality Act because there are feasible alternatives or mitigation measures that would substantially lessen any significant adverse impact which the Land Use Plan Amendment may have on the environment.

II. MOTION: *I move that the Commission certify the Land Use Plan Amendment #3-04B for the City of Carlsbad as submitted if modified in accordance with the suggested changes set forth in the staff report.*

STAFF RECOMMENDATION: CERTIFICATION IF MODIFIED AS SUGGESTED:

Staff recommends a **YES** vote on the motion. Passage of the motion will result in certification with suggested modifications of the submitted land use plan amendment and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the appointed Commissioners.

RESOLUTION TO CERTIFY SUBMITTED LAND USE PLAN AMENDMENT IF MODIFIED AS SUGGESTED:

The Commission hereby certifies the Land Use Plan Amendment #3-04B for the City of Carlsbad if modified as suggested and adopts the findings set forth below, on the grounds that the submitted Land Use Plan Amendment with the suggested modifications will meet the requirements of and conform to the policies of Chapter 3 of the California Coastal Act. Certification of the plan amendment if modified as suggested below complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the plan on the environment, or 2) there are no further feasible alternatives or mitigation measures which could substantially lessen any significant adverse impact which the Land Use Plan Amendment may have on the environment.

III. MOTION: *I move that the Commission reject the Implementation Program Amendment #3-04B for the City of Carlsbad as submitted.*

STAFF RECOMMENDATION OF REJECTION:

Staff recommends a **YES** vote. Passage of this motion will result in rejection of Implementation Program Amendment and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

RESOLUTION TO DENY CERTIFICATION OF THE IMPLEMENTATION PROGRAM AMENDMENT AS SUBMITTED:

The Commission hereby denies certification of the Implementation Program Amendment #3-04B submitted for the City of Carlsbad and adopts the findings set forth below on grounds that the Implementation Program Amendment as submitted does not conform with and is inadequate to carry out the provisions of the certified Land Use Plan, as amended. Certification of the Implementation Program Amendment as submitted would not meet the requirements of the California Environmental Quality Act as there are feasible alternatives and mitigation measures that would substantially lessen the significant adverse impacts on the environment that will result from certification of the Implementation Program Amendment as submitted.

IV. MOTION: *I move that the Commission certify the Implementation Program Amendment #3-04B for the City of Carlsbad if it is modified as suggested in the staff report.*

STAFF RECOMMENDATION:

Staff recommends a **YES** vote. Passage of this motion will result in certification of the Implementation Program Amendment with suggested modifications and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

RESOLUTION TO CERTIFY THE IMPLEMENTATION PROGRAM AMENDMENT WITH SUGGESTED MODIFICATIONS:

The Commission hereby certifies the Implementation Program Amendment #3-04B for the City of Carlsbad if modified as suggested and adopts the findings set forth below on grounds that the Implementation Program Amendment with the suggested modifications will conform with and be adequate to carry out the provisions of the certified Land Use Plan, as amended. Certification of the Implementation Program Amendment if modified as suggested complies with the California Environmental Quality Act, because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the Implementation Program Amendment on the environment, or 2) there are no further feasible alternatives and mitigation measures that would substantially lessen any significant adverse impacts on the environment.

PART III. SUGGESTED MODIFICATIONS

Staff recommends the following suggested revisions to the proposed LCP be adopted. In case of conflicts with any existing LCP policies, the below language shall take precedence.

1) In all the areas of the certified Land Use Plan segments where the City has proposed to add the following language, modify and expand the language as follows:

1. All development must include mitigation measures for the control of urban runoff flow rates and velocities, urban pollutants, erosion and sedimentation in accordance with the requirements of the City's Grading Ordinance, Storm Water Ordinance, Standard Urban Storm Water Mitigation Plan (SUSMP), ~~Jurisdictional Urban Runoff Management Program (JURMP)~~, Master Drainage Plan, ~~the San Diego County Hydrology Manual~~ and the additional requirements contained herein. The SUSMP and the Master Drainage Plan (1994) are incorporated into the LCP by reference. Development must also comply with the requirements of the Jurisdictional Urban Runoff Management Program (JURMP), and the San Diego County Hydrology Manual to the extent that these requirements are not inconsistent with any policies of the LCP.
2. Prior to making land use decisions, the City shall utilize methods available to estimate increases in pollutant loads and flows resulting from projected future development. The City shall require developments to incorporate structural and non-structural BMPs to mitigate the projected increases in pollutant loads and minimize any increases in peak runoff rate.
3. Water pollution prevention methods shall be implemented to the maximum extent practicable, and supplemented by pollutant source controls and treatment. Small collection strategies located at, or as close as possible to, the source (i.e., the point where water initially meets the ground) to minimize the transport of urban runoff and pollutants offsite and into a municipal separate storm sewer system (MS4) shall be utilized.
4. Post-development runoff from a site shall not contain pollutant loads which cause or contribute to an exceedance of receiving water quality objectives or which have not been reduced to the maximum extent practicable.
5. Development projects shall be designed to comply with the following site design principles:
 - a. Protect slopes and channels to decrease the potential for slopes and/or channels from eroding and impacting stormwater runoff.

- b. To the extent practicable, cluster development on the least environmentally sensitive portions of a site while leaving the remaining land in a natural undisturbed condition.
 - c. Preserve, and where possible, create or restore areas that provide important water quality benefits, such as riparian corridors, wetlands and buffer zones. Land acquisition of such areas shall be encouraged.
 - d. Provide development-free buffer zones for natural water bodies.
 - e. Minimize the amount of impervious surfaces and directly connected impervious surfaces in areas of new development and redevelopment.
 - f. Where feasible, implement site design/landscape features to slow runoff and maximize on-site infiltration of runoff.
 - g. Properly design outdoor material storage areas (including the use of roof or awning covers) to minimize the opportunity for toxic compounds, oil and grease, heavy metals, nutrients, suspended solids and other pollutants from entering the stormwater conveyance system.
 - h. Incorporate roof or awning covers over trash storage areas to prevent off-site transport of trash and other pollutants from entering the stormwater conveyance system.
 - i. Limit disturbances of natural water bodies and natural drainage systems caused by development including roads, highways and bridges.
 - j. Design streets and circulation systems to reduce pollutants associated with vehicles and traffic resulting from development.
6. Priority projects identified in the SUSMP will incorporate structural BMPs and submit a Water Quality Technical Report as specified in the NPDES permit and in the SUSMP.
 7. Structural BMPs used to meet SUSMP requirements for priority projects shall be based on the California Stormwater Quality Association (CASQA) Stormwater Best Management Practice (BMP) Handbooks dated January 2003 or the current version of that publication and designed to meet infiltrate, filter or treat the runoff produce from each storm event up to and including the 85th percentile 24-hour storm event.
 8. Priority projects will include projects increasing impervious area by more than 2500 square feet or by more than 10% of existing impervious area, that are in, adjacent to or drain directly to Environmentally Sensitive Areas identified in the City of Carlsbad Standard Urban Storm Water Mitigation Plan (SUSMP) dated April 2003, using the definitions of “adjacent to” and “draining directly to” that are found in the SUSMP.

9. The City shall include requirements in all coastal development permit approvals to inspect and maintain required BMPs for the life of the project.
10. The City will encourage and support public outreach and education regarding the potential water quality impacts of development.
11. Development shall minimize land disturbance activities during construction (e.g., clearing, grading, and cut-and-fill), especially in erosive areas (including steep slopes, unstable areas, and erosive soils), to minimize the impacts on water quality of excessive erosion and sedimentation. Development shall incorporate soil stabilization BMPs on disturbed areas as soon as feasible.
12. Projects within 200 feet of the Pacific Ocean shall be dealt with as "Projects Discharging to Receiving Waters within Environmentally Sensitive Areas" as defined in Appendix I of the SUSMP, including being treated as a priority project if they create more than 2500 square feet of impermeable surface or increase the impermeable surface on the property by more than 10%. .
13. Although residential developments of less than 10 units, including single family residences, are generally exempt from the priority project requirements, they shall meet those requirements, including achievement of the numerical sizing standard, if they are in, near or discharging directly to an ESA or the Pacific Ocean; or shall provide a written report signed by a licensed civil engineer showing that they are mitigating polluted runoff, including dry weather nuisance flows, to the maximum extent practicable.
14. Detached residential homes shall be required to use efficient irrigation systems and landscape designs or other methods to minimize or eliminate dry weather flow, if they are within 200 feet of an ESA, coastal bluffs or rocky intertidal areas.
15. The following minor revisions may occur to the Carlsbad SUSMP Storm Water Standards dated April 2003 without an LCP amendment:
 - a. Addition of new Best Management Practices (BMPs) found to be more protective of water quality than current BMPs or removal of BMPs found to be ineffective. (This does not include removal of BMPs or categories of BMPs on the basis that the City finds them to be infeasible or impractical).
 - b. Addition of new development categories as Priority Projects.
 - c. Addition of new coastal waters to the map of Environmentally Sensitive Areas.
 - d. Reductions in the area of impervious surfaces used to designate a specific category of Priority Project.
16. Any minor changes made pursuant to the above list shall be accompanied by a finding that the changes will improve and better protect coastal water quality.

The City Engineer or Planning Director shall notify the Executive Director in writing of any of the above listed changes. For any changes not included in the above list, the City shall contact the Executive Director to determine whether an LCP amendment is necessary, and, if necessary, shall subsequently apply for an LCP amendment for the changes.

2) In Sections 21.203 (B)(3), 21.203 (B)(4) and 21.205.060, modify the proposed revision as follows:

All development must include mitigation measures for the control of urban runoff flow rates and velocities, urban pollutants, erosion and sedimentation in accordance with the requirements of the City's Grading Ordinance, Storm Water Ordinance, Standard Urban Storm Water Mitigation Plan (SUSMP), Jurisdictional Urban Runoff Management Program (JURMP), Master Drainage Plan, the San Diego County Hydrology manual and the additional requirements contained herein. In addition, the following standards shall apply:

1. Priority projects identified in the SUSMP will incorporate structural BMPs and submit a Water Quality Technical Report as specified in the NPDES permit and in the SUSMP.
2. Structural BMPs used to meet SUSMP requirements for priority projects shall be based on the California Stormwater Quality Association (CASQA) Stormwater Best Management Practice (BMP) Handbooks dated January 2003 or the current version of that publication and designed to meet infiltrate, filter or treat the runoff produce from each storm event up to and including the 85th percentile 24-hour storm event.
3. Priority projects will include projects increasing impervious area by more than 2500 square feet or by more than 10% of existing impervious area, that are in, adjacent to or drain directly to Environmentally Sensitive Areas identified in the City of Carlsbad Standard Urban Storm Water Mitigation Plan (SUSMP) dated April 2003, using the definitions of "adjacent to" and "draining directly to" that are found in the SUSMP.
4. The City shall include requirements in all coastal development permit approvals to inspect and maintain required BMPs for the life of the project.
5. The City will encourage and support public outreach and education regarding the potential water quality impacts of development.
6. Development shall minimize land disturbance activities during construction (e.g., clearing, grading, and cut-and-fill), especially in erosive areas (including steep slopes, unstable areas, and erosive soils), to minimize the impacts on water quality of excessive erosion and sedimentation. Development shall incorporate soil stabilization BMPs on disturbed areas as soon as feasible.

7. Projects within 200 feet of the Pacific Ocean shall be dealt with as "Projects Discharging to Receiving Waters within Environmentally Sensitive Areas" as defined in Appendix I of the SUSMP, including being treated as a priority project if they create more than 2500 square feet of impermeable surface or increase the impermeable surface on the property by more than 10%..
8. Although residential developments of less than 10 units, including single family residences, are generally exempt from the priority project requirements, they shall meet those requirements, including achievement of the numerical sizing standard, if they are in, near or discharging directly to an ESA or the Pacific Ocean; or shall provide a written report signed by a licensed civil engineer showing that they are mitigating polluted runoff, including dry weather nuisance flows, to the maximum extent practicable.
9. Detached residential homes shall be required to use efficient irrigation systems and landscape designs or other methods to minimize or eliminate dry weather flow, if they are within 200 feet of an ESA, coastal bluffs or rocky intertidal areas.

PART IV. FINDINGS FOR DENIAL OF CERTIFICATION OF THE CITY OF CARLSBAD LAND USE PLAN AMENDMENT #3-04B, AS SUBMITTED, AND APPROVAL IF MODIFIED

A. AMENDMENT DESCRIPTION & BACKGROUND

The specific amendments, as proposed, would add the following sentence in various locations throughout the Mello I, Mello II, Agua Hedionda, East Batiquitos Lagoon/Hunt Properties and West Batiquitos Lagoon/Sammis Properties segments of the LUP:

All development must include mitigation measures for the control of urban runoff flow rates and velocities, urban pollutants, erosion and sedimentation in accordance with the requirements of the City's Grading Ordinance, Storm Water Ordinance, Standard Urban Storm Water Mitigation Plan (SUSMP), Jurisdictional Urban Runoff Management Program (JURMP), Master Drainage Plan, the San Diego County Hydrology Manual and the additional requirements contained herein.

The above sentence would replace the existing LUP requirement that development obtain a site-specific report containing mitigation for increased runoff and sedimentation subject to the requirements for the Model Erosion Control Ordinance contained in the June 1980 Carlsbad Master Drainage Plan (see Exhibit #1). The amendment does not specifically incorporate the SUSMP (Exhibit #6), JURMP, or the updated 1994 Master Drainage Plan into the LCP. The Grading Ordinance and Stormwater Ordinance are currently part of the certified LCP and will remain part of the Implementation Plan.

The amendment would also remove from the LUP the existing prohibition on grading activities during the winter, since the grading and stormwater ordinances, SUSMP,

JURMP, etc., contain policies addressing runoff and the protection of water quality, including "weather-triggered" BMPs and more frequent inspections of projects that have higher threats to water quality and/or occur during the rainy season.

The intent of the amendment is to incorporate certain requirements of the San Diego Regional Water Quality Control Board's (SDRWQCB) Municipal Stormwater National Pollution Discharge Elimination System (NPDES) permit (Order No. 2001-01) into the City's Local Coastal Program (LCP). The NPDES permit is part of a larger effort to improve water quality in the San Diego area. The revised LUP language proposed by the City in this amendment was developed to comply with the requirements of the NPDES permit. That permit sets waste discharge requirements for discharges of urban runoff from the municipal separate storm sewer systems (MS4s) draining the watersheds of the County of San Diego, the incorporated cities of San Diego County (known as "Copermittees"), and the San Diego Unified Port District, but it also imposes requirements for how those municipalities regulate development within their jurisdictions in order to help them meet the end-of-pipe requirements imposed for their MS4s. .

The NPDES permit requirements are intended to strengthen and refine already existing regulations for grading, drainage and erosion controls, and add requirements for structural and non-structural Best Management Practices (BMPs), with the long range goal of significantly improving the region's water quality. The NPDES permit includes findings regarding the effects of urban development and the impairments to water bodies, including the following:

"Urban runoff discharges from MS4s are a leading cause of receiving water quality impairment in the San Diego Region and throughout the United States. As runoff flows over urban areas, it picks up harmful pollutants such as pathogens, sediment (resulting from human activities), fertilizers, pesticides, heavy metals, and petroleum products. These pollutants often become dissolved or suspended in urban runoff and are conveyed and discharged to receiving waters, such as streams, lakes, lagoons, bays, and the ocean without treatment. Once in receiving waters, these pollutants harm aquatic life primarily through toxicity and habitat degradation. Furthermore, the pollutants can enter the food chain and may eventually enter the tissues of fish and humans."

To address the widespread problem of urban runoff, the NPDES permit requires that all projects be evaluated for their potential impact to water quality, and that appropriate measures to reduce polluted runoff to the maximum extent practicable are implemented. The NPDES permit requires that projects within certain development categories implement post-construction structural Best Management Practices. Also the NPDES permit requires that each Copermittee's General Plan (or equivalent plan) include:

"...water quality and watershed protection principles and policies to direct land-use decisions and require implementation of consistent water quality protection measures for development projects. As part of its Jurisdictional Urban Runoff Management Program document, each Copermittee shall provide a workplan with

time schedule detailing any changes to its General Plan regarding water quality and watershed protection.”

The Order requires eighteen cities (including the City of Carlsbad), the County of San Diego, and the San Diego Unified Port District (collectively known as Municipal Copermittees) to undertake certain actions including:

1. Prohibit non-storm water discharges into their respective MS4s (with certain exemptions);
2. Prohibit discharges of urban runoff containing pollutants which have not been reduced to the maximum extent practicable (MEP) into and from MS4s, including post-development runoff containing pollutants from new development or redevelopment;
3. Prohibit discharges from MS4s that cause or contribute to violations of water quality standards;
4. Establish, maintain, and enforce adequate legal authority to control pollutant discharges into and from its MS4 through ordinance, statute, permit, contract or similar means.
5. Implement, or require implementation of, best management practices to ensure that pollutant discharges into and from its MS4 are reduced to the MEP;
6. Take appropriate actions to reduce discharges of pollutants and runoff flow during each of the three major phases of urban development, i.e., the planning, construction, and existing development (or use) phases.

The NPDES permit requires each Copermittee to implement a Jurisdictional Urban Runoff Management Program (Jurisdictional URMP) that contains the components shown below:

Land-Use Planning for New Development and Redevelopment Component
Construction Component
Existing Development Component

- a. Municipal
- b. Industrial
- c. Commercial
- d. Residential

Education Component
Illicit Discharge Detection and Elimination Component
Public Participation Component
Assessment of Jurisdictional URMP Effectiveness Component
Fiscal Analysis Component

These components are intended to minimize the short and long-term impacts to water quality, and reduce pollutants from various land uses within the jurisdiction of the Copermittees. The NPDES permit details requirements for each of these components.

The NPDES permit requires that the Copermittees certify to the SDRWQCB that they have adequate legal authority to implement and enforce the requirements of the Order, including any new or updated urban runoff related ordinances. Additionally, the Copermittees must also show how they have implemented or upgraded ordinances within each of their jurisdictions to address runoff related specifically to construction activities and existing development. Copermittees, other than the City of Carlsbad, who have certified Local Coastal Programs, will likely have to submit LCP amendments for Commission review and approval in order to comply with the SDRWQCB Order, as well.

The Copermittees were also required to develop a model Standard Urban Storm Water Mitigation Plan (SUSMP), which shows how they will reduce pollutants and runoff flows from all new development and significant redevelopment projects falling within certain priority project categories. The model SUSMP, approved by the SDRWQCB in June 2002, now must be implemented by each Copermittee. The Order requires that projects within certain SUSMP development categories implement post-construction structural Best Management Practices that meet a numerical sizing criteria suitable to address runoff from storms up to and including the 85th percentile 24 hour storm event. The provisions of these local SUSMPs will address applicable projects during the planning and development stages. The City's current version of the SUSMP was approved by SDRWQCB staff in April 2003.

In summary, the City's amendment would replace the existing provisions of the LUP regarding site specific studies addressing drainage, with reference to the Zoning Ordinance, Municipal Code, SUSMP, JURMP and the Master Drainage Plan. As described above, the City's amendment references these documents, although it does not specifically incorporate them into the LCP.

B. CONFORMANCE WITH CHAPTER 3 OF THE COASTAL ACT

The following Coastal Act policies are relevant to the proposed amendment:

Section 30230.

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231.

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and

substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Section 30240.

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

Section 30253.

New development shall:

(1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.

(2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. [...]

1. Findings For Denial. The Commission shares responsibility for regulating nonpoint source water pollution in the Coastal Zone of California with the State Water Resources Control Board (SWRCB) and the coastal Regional Water Quality Control Boards (RWQCBs). The Commission and the SWRCB are co-leads in developing and implementing the *Plan for California's Nonpoint Source Pollution Control Program* (January 2000), which outlines the state's strategy to ensure that all appropriate management measures and best management practices that reduce or prevent polluted runoff are implemented over a fifteen-year period. Many of these management measures and practices are best implemented at the local planning level, since they can be most cost effective during the design stage of development.

The Commission and the San Diego RWQCB are both working to protect water quality in the Carlsbad area. The Commission has primary responsibility for protecting coastal resources, including water quality, from the impacts of development in the coastal zone. The SWRCB and RWQCBs have primary responsibility for regulating discharges that may impact waters of the state through approval of discharge permits, investigating water quality impacts, monitoring discharges, setting water quality standards and taking enforcement actions where standards are violated.

Commission water quality staff have reviewed Carlsbad's Storm Water Ordinance (dated January 2, 2002) and Standard Storm Water Mitigation Plan (SUSMP) Storm Water Standards document (dated April 2003) and found that they generally provide a sound framework for protection of water quality within the City of Carlsbad. The SUSMP identifies important local water bodies such as Batiquitos, Agua Hedionda and Buena Vista Lagoons and Encinas Creek as Environmentally Sensitive Areas (as the term is defined in the San Diego County Municipal Storm Water Permit), requires additional water quality protection efforts near these water bodies, and has a lower threshold for when development is required to include structural BMPs in these areas than other areas.

However, the SUSMP does not include the Pacific Ocean in the list of ESAs (although a limited set of ESA protections are required of development near the ocean). The Coastal Act resource protection policies apply to the sensitive resources in the ocean as well as in the lagoons, and thus, this is a significant deficiency.

In addition, the SUSMP focuses on larger categories of development and limits the application of some water quality protections to developments of ten or more houses or attached residential buildings with ten or more dwelling units. This limitation is based on a presumption that it may not be practicable to provide structural treatment control BMPs or the more complex and expensive source control BMPs for all small residential developments. Nevertheless, in order to satisfy the requirements of Coastal Act sections 30230 and 30231, for developments directly adjacent to ESAs, and where standard site design and source controls are not adequate to protect coastal resources, treatment control and advanced source control BMPs must be reviewed and applied as needed to protect coastal water quality. For example, the proposed water quality policies include a limited exclusion from the requirement that Detached Residential Homes use Efficient Irrigation and Landscape Design source controls to limit the impacts of overwatering, excess fertilization and pesticides on water quality. However, allowing that limited exclusion where the residence is directly adjacent to or discharging directly to an ESA or the Pacific Ocean would have a significant adverse impact on sensitive resources, since these types of water quality impacts are especially detrimental to creeks, lagoons and marine intertidal habitat.

In a separate action to the proposed LCP amendment, the City recently added a list of water quality protection policies, and implementation and action programs to the Open Space and Conservation Element of the City's General Plan (see Exhibit #5). These policies provide specific site design principles for new development, require that water pollution prevention methods be implemented, and prohibit post-development runoff from containing harmful pollutant loads. However, the Open Space and Conservation Element is not part of the City's LCP, and thus, these important mitigation measures would not necessarily be implemented in the Coastal Zone as part of the coastal development permit review process.

Therefore, as submitted, the proposed LUP amendment does not contain sufficient policy direction and specificity to serve as the standard of review for the LCP Implementation Plan (IP), or to require development to conform to the requirements of the NPDES permit and Sections 30230, 32031 and 30240 of the Coastal Act through coastal development

permit review. The LUP is the standard of review for the implementation measures of the Zoning Code, and conformance with the certified LCP is the standard of review for coastal development permits. Revisions to the implementation measures in the certified IP could be made which may lessen or remove the appropriate water quality protections required by the Coastal Act, if these same protections are not provided in the LUP as the legal standard of review. Therefore, the amendment must be denied as submitted.

2. Findings For Approval. In order to address the above listed deficiencies in the City's submittal, the Commission is suggesting the language proposed by the City to simply reference the Grading Ordinance, Stormwater Ordinance, JURMP, SUSMP and Master Drainage Plan be expanded to include specific policy direction for implementation of the provisions of these documents in the coastal zone. In addition, the suggested changes would incorporate the SUSMP and the Master Drainage Plan by reference into the LCP (#1) to serve as a standard of review for coastal development permits. The Commission's suggested revisions would add the water quality policies and implementation and action programs recently incorporated into the Open Space and Conservation Element of the City's General Plan Open into the LUP. (#2-5).

Suggested policies #6-7 indicate that the priority project designation found in the SUSMP will be used to determine those projects that require structural treatment BMPs meeting the 85th percentile sizing criteria and a Water Quality Technical Report, as well as identifying the California Stormwater Quality Association (CASQA) Stormwater Best Management Practice (BMP) Handbooks dated January 2003 as the guidance for determining BMP design and operation.

Suggested policy #8 indicates the impervious surface threshold for projects draining to ESAs that are treated as priority projects.

Suggested policy #9-11 are general policies that are important to the implementation of an effective polluted runoff control plan and include requirements for inspection and maintenance of required BMPs for the life of the development project, ongoing efforts at the local level to educate the public about their role in preventing development from adversely impacting water quality and minimizing land disturbance during construction to guard against excessive erosion and sedimentation.

A policy requiring that development adjacent to or draining directly to the Pacific Ocean is treated as if the Pacific Ocean is included in the City's list of Environmentally Sensitive Areas has been added to the LUP to ensure that Coastal Act resource protection policies apply to the sensitive resources in the ocean as well as in the lagoons (Suggested policy #12).

The current water quality policies in the SUSMP exempts development of fewer than 10 houses or residential buildings with less than 10 dwelling units from priority project requirements to implement structural treatment control BMPs and meet numeric sizing criteria. These smaller developments may still have a significant affect on coastal water quality, especially where they are directly adjacent to or discharging directly to an ESA or the Pacific Ocean. A policy has been added eliminating the exemption for smaller

developments that are directly adjacent to or discharging directly to an ESA or the Pacific Ocean, unless they provide a written report signed by a licensed civil engineer showing that they are mitigating polluted runoff, including dry weather nuisance flows, to the maximum extent practicable. (Suggested policy #13).

The current water quality policies in the SUSMP include a limited exclusion for Detached Residential Homes from the requirement to use Efficient Irrigation and Landscape Design source controls to limit the impacts of overwatering, excess fertilization and pesticides on water quality. Since these types of water quality impacts are especially detrimental to creeks, lagoons and marine intertidal habitat as occurs in the Carlsbad area, a new LUP policy is proposed that would negate that exclusion where the residence is directly adjacent to or discharging directly to an ESA or the Pacific Ocean (Suggested policy # 14).

Since the science, policy and regulation of nonpoint source pollution control are rapidly evolving, the City of Carlsbad (and other Copermittees in San Diego County) have expressed a concern that to keep the SUSMP current may be difficult once it is included in the certified LCP. In recognition of the need to have the land development requirements reflect the best current information and to prevent a relaxation of water quality protections, two policies are added to the LUP that will allow for improvements in water quality protection without a requirement for an LCP amendment. The policies limit the types of SUSMP modifications to changes in the list of approved BMPs, additions of land uses to the priority project category, addition of water bodies as Environmentally Sensitive Areas and lowering of the impervious surface area thresholds for priority projects (Suggested policy #15). Only these limited types of changes, which only have the potential to improve water quality standards or efficiency, could occur without an amendment to the LCP. Should the need for other changes arise, depending upon the nature and significance of proposed changes, the Commission may be able to review certain changes as de minimis amendments.

The proposed modifications are designed to ensure both that the specific water quality BMPs and mitigation measures already adopted by the City through the SUSMP or General Plan are incorporated into the LUP, and to require additional protection for sensitive resources within the Coastal Zone. As modified, the LUP policies will ensure that water quality and environmentally sensitive resources are enhanced and preserved, consistent with the Chapter 3 requirements.

**PART VI. FINDINGS FOR DENIAL OF THE CITY OF CARLSBAD
IMPLEMENTATION PLAN AMENDMENT #3-04B AND APPROVAL
IF MODIFIED**

A. AMENDMENT DESCRIPTION. The City is proposing to amend four provisions of its implementation plan: the Storm Water Management and Discharge Control Ordinance (Chapter 15.12), the Grading and Erosion Control Ordinance (Chapter 15.16), and Zoning Ordinance chapters 21.203 (Coastal Resource Protection Overlay Zone) and 21.205 (Coastal Resource Overlay Zone Mello I LCP Segment). Similar to the changes proposed for the LUP, the proposed amendment would make changes to these

sections to reference the requirement to comply with the SUSMP, JURMP, Master Drainage Plan, and the San Diego County Hydrology Manual, and the City's other stormwater and drainage plans. The City is also striking the existing reference to the City's Master Drainage Plan (June 1980), and replacing it with reference to the Master Drainage Plan, the most current version of which is dated 1994.

Storm Water Management and Discharge Control Ordinance (Chapter 15.12)

The proposed changes to the Storm Water Management and Discharge Control Ordinance would make minor revisions and clarifications to various definitions, such as "Storm Water" and "Storm Water Conveyance System" to ensure consistency with the NPDES terminology (see Exhibit #4). The definition of "Development" in this Ordinance is the same as the definition contained in the Coastal Act, and that would not change. Other revisions include updating the types of activities requiring BMPs and Storm Water Pollution Prevention Plans (SWPPPs) and identifying the penalties for non-compliance with the Ordinance.

Grading and Erosion Control Ordinance (15.16)

The Grading and Erosion Control Ordinance would be revised to add a definition of the JURMP and SUSMP, and add additional clarification and requirements regarding projects which can be exempted from grading permits (see Exhibit #3).

Coastal Resource Protection Overlay Zone

The following sentence would be added to the Coastal Resource Protection Overlay Zone:

All development must include mitigation measures for the control of urban runoff flow rates and velocities, urban pollutants, erosion and sedimentation in accordance with the requirements of the City's Grading Ordinance, Storm Water Ordinance, SUSMP, JURMP, Master Drainage Plan and the San Diego County Hydrology Manual and any amendments to them.

This sentence would replace the existing requirement that a site specific report be prepared for development identifying mitigation measures needed to avoid increased runoff and soil erosion. The amendment would also delete the existing prohibition on grading activities between the months of October (or in some cases, November 15) and March (see Exhibit #2).

Coastal Resource Overlay Zone Mello I LCP Segment

The following sentence would be added to the Coastal Resource Protection Overlay Zone Mello I Segment:

All development must include mitigation measures for the control of urban runoff flow rates and velocities, urban pollutants, erosion and sedimentation in

accordance with the requirements of the City's Grading Ordinance, Storm Water Ordinance, SUSMP, JURMP, Master Drainage Plan and the San Diego County Hydrology Manual and the additional requirements enumerated in this Section.

Similar to the general Coastal Resource Overlay Zone, this sentence would replace the existing requirement that the applicant submit an erosion, sedimentation and drainage report for development. The amendment would also delete the existing requirement that grading activities be limited to between April 1 and October 1 of each year (see Exhibit #2).

B. PURPOSE AND INTENT OF THE ORDINANCE.

The purpose and intent of the **Storm Water Management and Discharge Control** ordinance is to ensure the environmental and public health, safety, and general welfare of the residential, commercial, and industrial sectors of the City of Carlsbad by regulating storm water discharges, reducing pollutants in storm water discharges, and protecting and enhancing the water quality of the City of Carlsbad.

The purpose of intent of the **Grading and Erosion Control** ordinance is to control soil erosion, sedimentation and other potential adverse impacts caused by grading operations or the increased rate of surface water runoff from graded sites; preserve natural plant communities and existing mature trees; and prevent unnecessary and unauthorized grading, including clearing and grubbing of vegetation.

The purpose and intent of the **Coastal Resource Protection Overlay Zone** is to provide additional resource protective regulations within designated areas to preserve, protect and enhance the habitat resource values of Buena Vista Lagoon, Agua Hedionda Lagoon, Batiquitos Lagoon, and steep sloping hillsides, including protecting biological resources and deterring soil erosion.

The purpose and intent of the **Coastal Resource Overlay Zone Mello I LCP Segment** is to supplement the underlying zone with additional resource protection policies for the Batiquitos Lagoon watershed and agricultural uses.

C. ADEQUACY OF THE ORDINANCE TO IMPLEMENT THE CERTIFIED LUP SEGMENTS.

The standard of review for LCP implementation submittals or amendments is their consistency with and ability to carry out the provisions of the certified Land Use Plan (LUP). In the case of the subject LCP amendment, the City's Zoning Code serves as the Implementation Program for the LCP.

1. Findings for Rejection. As noted above, Carlsbad's Storm Water Ordinance (dated January 2, 2002) and Standard Storm Water Mitigation Plan (SUSMP) Storm Water Standards document (dated April 2004) generally contain the policies and requirements necessary to protect and preserve water quality and biological resources. The Commission is suggesting that these policies be incorporated into both the LUP and

IP as it is important for the specific BMPs, mitigation measures, and development requirements to be included in the City's implementing ordinances, because these documents are the main tools used by the City in carrying out the policies of the Coastal Act and approving coastal development permits.

Without incorporation of the SUSMP into the IP, the City's Zoning Ordinance would not be adequate to carry out the policies of the certified Land Use Plan and, therefore, the IP must be denied as submitted.

2. Findings For Approval. The above findings for approval of the LUP detail the ways in which the proposed suggested modifications are consistent with the Coastal Act, and are incorporated herein. Suggested modifications incorporate the SUSMP into the LCP implementation plan. The specific, detailed policies, standards, mitigation measures, and development requirements contained in the SUSMP are the means by which the water quality protection policies are implemented consistent with the certified Land Use Plan .

Incorporation of the SUSMP and additional policies into the LCP Implementation Plan will provide greater assurance that the grading ordinance and the stormwater management ordinance will be implemented concurrently and in a consistent manner, and that any changes to the ordinances (other than those specifically exempted from needing Commission approval) will be reviewed for coastal zone impacts. The amendments requested herein, if modified as suggested, will add to, broaden, and improve upon, the scope of the existing ordinance.

Therefore, the Commission finds that as modified, the proposed amendments to the City's implementation plan are fully consistent with, and adequate to carry out, the certified City of Carlsbad LUP policies, as modified herein. If the suggested modifications are incorporated, the Storm Water Management and Discharge Control, Grading and Erosion Control, Coastal Resource Protection Overlay Zone, and the City's Master Drainage Plan, will conform with and will be adequate to carry out the water quality policies of the certified LUP, and will ensure continuing protection of coastal resources.

PART VIII. CONSISTENCY WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 21080.5 of the California Environmental Quality Act (CEQA) exempts local government from the requirement of preparing an environmental impact report (EIR) in connection with its local coastal program. Instead, the CEQA responsibilities are assigned to the Coastal Commission and the Commission's LCP review and approval program has been found by the Resources Agency to be functionally equivalent to the EIR process. Thus, under CEQA Section 21080.5, the Commission is relieved of the responsibility to prepare an EIR for each LCP.

Nevertheless, the Commission is required in an LCP submittal or, as in this case, an LCP amendment submittal, to find that the LCP, or LCP, as amended, does conform with

CEQA provisions. The LCP amendment as submitted does not ensure that the policies of the SUSMP will be implemented in the Coastal Zone, and does not provide adequate specific requirements that BMPs be provided for development, or protect all of the City's sensitive water bodies in a manner consistent with the requirements of the Coastal Act. If the amendment is modified as suggested to ensure that the amendment is implemented in compliance with the SUSMP and with the additional standards specified in the suggested modifications, the amendment will not result in any adverse impacts to the environment. The Commission finds that the proposed amendment, if modified as suggested, does conform to CEQA provisions. Therefore, the Commission finds that approval of the LCP amendment will not result in any significant unmitigated adverse environmental impacts.